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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,441	10/02/2003	Anne-Marie Stomp	5051-337DVCT3	9042
20792 7590 02/28/2007 MYERS BIGEL SIBLEY & SAJOVEC PO BOX 37428 RALEIGH, NC 27627			EXAMINER ZHENG, LI	
			ART UNIT 1638	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	DELIVERY MODE
3 MONTHS			02/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/677,441	Applicant(s) STOMP ET AL.	
	Examiner Li Zheng	Art Unit 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10202006/11282006</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Applicant's amendments to claims 5-6 and 26-27, amendment to the specification, and submission of anew IDS filed on 11/28/2006 are acknowledged.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. The objection to the specification is withdrawn due to the amendment to the specification .
4. The objections to claims 5-6 and 26-27 are withdrawn due to the amendment to the claims.
5. The rejections of claim 1-40 under 35 U.S.C. 112 first paragraph for lacking enablement are withdrawn in light of Applicants' argument and the declaration of Dr. Lynn F. Dickey under 37 C.F.R. § 1.132.

Double Patenting

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6. The obvious-type double patenting rejections over U.S. Patent No. 6,040,498 and the provisional obvious-type double patenting rejections over U.S. Provisional Application No. 10/273,974 are withdrawn due to submission of the terminal disclaimer on 11/28/2006.

7. Claims 1-10, 12-31, 33-40 remain rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 22-25 of U.S. Patent No. 6,815,184, for the reasons of record stated in the Office action mailed July 28, 2006. In addition, claims 11 and 32 remain rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,815,184 in view of Dieryck et al., for the reasons of record stated in the Office action mailed July 28, 2006. Applicants traverse in the paper filed November 28, 2006. Applicants' arguments have been fully considered but were not found persuasive.

Applicants argue that "since the present application and the cited patent are neither commonly owned nor subject to a joint research agreement", the double patenting rejection is inappropriate (response, page 11, part B). The examiner disagrees. According to MPEP § 804, chart II-B, an obvious double patenting rejection is appropriate when an application and a patent have at least one common inventor and no common assignee. In this case, the instant application shares at least one inventor with the U.S. Patent No. 6,815,184, therefore the rejection is appropriate. It is suggested that Applicants file a joint research agreement and terminal disclaimer.

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8. Claims 1-10, 12-31, 33-40 remain provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 22-25 of copending Application No. 10/873,846. In addition, Claims 11 and 32 remain provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,815,184 in view of Dieryck et al. Applicants cite the same argument as above. The rejection is maintained for the reasons discussed above.

Summary

Claims 1-40 are rejected.

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Li Zheng whose telephone number is 571-272-8031. The examiner can normally be reached on Monday through Friday 9:00 AM - 5:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Ashwin D. Mehta', is positioned above the printed name and title.

ASHWIN D. MEHTA, PH.D.
PRIMARY EXAMINER

